

Louisiana Law Review

Volume 28 | Number 3

*The Work of the Louisiana Appellate Courts for the
1966-1967 Term: A Symposium
April 1968*

Private Law: Property

Frederick W. Ellis

Repository Citation

Frederick W. Ellis, *Private Law: Property*, 28 La. L. Rev. (1968)

Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol28/iss3/5>

This Article is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kreed25@lsu.edu.

to create jurisdiction where none exists. A much sounder principle is implicit in article 113 of the Civil Code, according to which an absolutely null marriage may be attacked by the parties, the attorney general, or any interested party.

PROPERTY

*Frederick W. Ellis**

In *Jeanerette Lumber & Shingle Co. v. Board of Commissioners*,¹ the Supreme Court held that the article 665 levee servitude did not affect land not presently fronting on a navigable river and not part of an original riparian grant. There is no necessity to reiterate commentary which fully supports the decision.² Because the original justification for the servitude has been substantially eroded, it is hoped that in resolving remaining questions, the court will continue to apply article 665 restrictively.

*Wild v. LeBlanc*³ is an interesting decision, also discussed fully elsewhere,⁴ on the problem of continuous servitude. In accordance with prior rice country jurisprudence,⁵ the court held that irrigation drainage rights constituted a continuous servitude which could be acquired by ten-year prescription, even though acts of man to exercise the drainage took place off the servient estate. While resort to French writings about flushing commodes in Paris might furnish reasons to criticize the Louisiana jurisprudence recognizing that the necessity of acts off the servient estate do not render a servitude discontinuous, the practical need for protecting long-established drainage systems in Louisiana lowlands furnishes more serious reason to support the opinion. These needs were probably as much in the minds of the redactors of our Code in 1825 as they undoubtedly are in the minds of our judges today.

State v. Thompson,⁶ an expropriation decision, considered

* Associate Professor of Law, Louisiana State University; Faculty Editor, Louisiana Law Review.

1. 249 La. 508, 187 So.2d 715 (1966).

2. Wolfe, *The Appropriation of Property for Levees: A Louisiana Study in Taking Without Just Compensation*, 40 TUL. L. REV. 233 (1966); Note, 27 LA. L. REV. 321 (1967).

3. 191 So.2d 146 (La. App. 3d Cir. 1966).

4. Note, 28 LA. L. REV. 134 (1967).

5. Discussed at 191 So.2d 146, 148 (La. App. 3d Cir. 1966).

6. 188 So.2d 753 (La. App. 2d Cir. 1966).

whether certain underground tanks were immovables by destination to determine whether there was a right to severance damages to the tanks. The case had interesting facts in that the premises were used not merely as a business, but as a multiple-type commercial enterprise—a combined grocery, filling station, and cafe. Since the tanks were for the “service and improvement” of the overall enterprise to which the land was devoted, the decision seems to be in accord with the plain letter of article 468 in affirmatively deciding the question.

Beavers v. Butler,⁷ although clearly not concerned with property problems, titillates a student of the property aspects of our ever-changing waterbodies. It held that the construction of a dam across a bayou in the creation of Lake D’Arbonne did not effect a change in its status as a navigable stream. While this holding was apparently only concerned with navigability, the question arises as to whether the status of a waterbody as a stream or a lake cannot be changed by works of man. In view of this writer’s former involvement as counsel in *State v. Cockrell*,⁸ which had similar issues that may be reconsidered in pending litigation, further comment is not made.

For similar reasons, evaluation by this writer of *Gray v. Department of Highways*⁹ would not be in order. The Supreme Court held, among other things, that article 507 was not applicable to a claim by landowners for dirt value and damages to land caused by alleged unauthorized use of land as a borrow pit and incorporation of the dirt in a roadbed owned in full ownership by the state.

MATRIMONIAL REGIMES

Robert A. Pascal*

PENSIONS AND ANNUITIES

In the 1965-66 term the Court of Appeal for the Second Circuit had occasion to note, but not to decide, that although pensions and other benefits under the Teachers’ Retirement Sys-

7. 188 So.2d 725 (La. App. 2d Cir. 1966), writ refused, 249 La. 739, 190 So.2d 242 (1966).

8. 162 So.2d 361 (La. App. 1st Cir. 1964), writ refused, 246 La. 343, 164 So.2d 350 (1964).

9. 250 La. 1045, 202 So.2d 24 (1967).

* Professor of Law, Louisiana State University Law School.